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May 25, 1988



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Robert C. Lerche, Esq.
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Dear Bob:

On April 19, 1988, the U.S. Environmental Protection Agency issued a proposed rule governing the reporting of "continuous releases" of hazardous substances pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"). Because of the potential impact on your activities and operations, you should probably consider the implications this rulemaking may have, and whether to submit comments on the proposed rule. Comments must be submitted on or before June 20, 1988.

The balance of this letter briefly describes the content of EPA's proposal. This information is, of course, provided as a client service and at no charge.

As you may know, CERCLA requires that facility owners and operators immediately report releases of "reportable quantities" of "hazardous substances" into the environment. Many facilities, however, emit such substances in considerable quantities on a regular basis, such as unpermitted releases through seepage from surface impoundments or earthen dams. To relieve such facilities from being required to report on a daily or frequent basis, CERCLA authorizes reduced reporting obligations for "continuous releases."

Under EPA's proposal, if a facility can establish that a given release is "continuous without interruption or abatement, continuous during operating hours, or continuous during regularly-occurring batch processes," and is "stable in quantity and rate," it will be deemed a "continuous release." Such

ADMIN RECCRD

SW-A-002920

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release need only be reported annually or when a release occurs that "represents a statistically significant increase" above that anticipated. The draft rule also proposes that all releases occurring at various locations in contiguous plants or installations on contiguous grounds that are under common ownership or control be added together and treated as a single release for the purpose of the determinations required under the proposed rule.

It is important that EPA implement the continuous release provisions of CERCLA in a manner that minimizes the cost and difficulty of qualifying for reduced reporting, and that makes these reduced requirements as broadly available as possible. In that regard, you may wish to consider in particular those portions of the proposed regulation that define its applicability, and the circumstances under which additional reporting is required, with particular reference to your activities and operations. One of the reasons that it is particularly important to minimize reporting obligations is that by so doing, you likewise reduce the potential for failure to comply with notification requirements, and thus reduce potential liability under CERCLA, which can be considerable.

We anticipate that a number of our clients will wish to submit comments regarding EPA's proposed continuous release regulations. It is likely that there will be many common concerns, and we would be happy to coordinate the formation of client groups with common interests to facilitate more economical commenting. If you would like further information regarding the draft regulations or their potential applicability to your operations, please call me.

Very truly yours,



John D. Fognani
of Holland & Hart

JDF/jlj

Enclosure

cc: Mr. Jack McNett